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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

418268822US1

Application Number

09/780,579-Conf.
#1605

Filed

February 9, 2001

First Named Inventor

Jeff B. Erwin

Art Unit

2665

Examiner

M. U. Phan

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant /inventor.

☐

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b)
is enclosed. (Form PTO/SB/96)

☒

attorney or agent of record.

Registration number 33,273

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34. _____

Maurice J. Pirio
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August 16, 2005

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

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*Total of 1 forms are submitted.

Application No.: 09/780,579

Docket No.: 418268822US1

EXPRESS MAIL NO. EV729044174US
(PATENT)



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application of:
Jeff B. Erwin

Application No.: 09/780,579

Confirmation No.: 1605

Filed: February 9, 2001

Art Unit: 2665

For: METHOD AND APPARATUS FOR
NETWORK ANALYSIS, SUCH AS
ANALYZING AND CORRELATING
IDENTIFIERS OF FRAME RELAY
CIRCUITS IN A NETWORK

Examiner: M. U. Phan

ARGUMENTS FOR PRE-APPEAL BRIEF REVIEW

Mail Stop AF
Commissioner for Patents
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Alexandria, VA 22313-1450

Sir:

Applicant submits along with the Notice of Appeal the following arguments for consideration by the conference panel. Applicant respectfully submits that the arguments point out clear errors in the rejection of the claims. Applicant respectfully requests reconsideration of this application in view of these arguments.

ARGUMENTS

Applicant's amendment of October 7, 2004 contains a summary of the claims on pages 9 and 10.

In the Examiner's response to applicant's previous arguments, the Examiner appears to be mistaken about the actual language of the claims.

In one instance, the Examiner correctly states that applicant argues that the cited reference does not disclose "'the statistical data representing more than one type of statistic' or 'different types of statistics', or 'multiple type [sic] of statistical data.'" (Office Action, Feb. 16, 2005, ¶ 3.) The Examiner, however, incorrectly states that "the features upon which applicant relies are not recited in the rejected claims." (*Id.*)

Applicant is perplexed by the Examiner's position. The language that is quoted above by the Examiner is taken verbatim from the pending claims. Claim 1 recites "the statistical data representing more than one type of statistic." Claim 14 recites "the statistical data representing different type of statistics." Claim 16 recites "core statistics that represent multiple types of statistical data."

In another instance, when objecting to claim 27, the Examiner incorrectly quotes the claim as reciting "a video service data system receiving audio data" instead of "receiving video data." (Office Action, Feb. 16, 2005, ¶ 5.) Claim 27 recites, in its entirety, "[t]he computer-readable medium of claim 20 wherein the statistical data is collected by polling a device at time interval boundaries." There is nothing in claim 27 that is related to video or audio data.

The Examiner rejects claim 1 based on the written description requirement, while only quoting language from claims 20-22, 26, 28-29, 34-35, and 37-38. Although it is unclear to applicant what claims are being rejected, applicant will address the claims specifically discussed by the Examiner. The Examiner states that the language "collection of statistical data associated with each device over a shorter time interval

indicates a connection" of claim 20 and the language "collection occurs repeatedly over increasingly shorter time intervals" of claims 21 and 34 have no support in the disclosure. (Office Action, Feb. 16, 2005, ¶ 6.) The specification, however, states that

while a shorter polling cycle [for statistical data] is preferred under step 320. For example, the polling interval is shortened by a percentage such as 50%. If the original polling interval was 30 minutes, then during a first iteration through step 320, the polling interval is reduced to 15 minutes. By reducing the polling interval for each suspected DLCI [data link circuit identifier] pair, a tight or nearly statistical fingerprint may be obtained.

(Specification, 15:7-19 and see also 5:5-10.) This section clearly describes polling for statistics over shorter intervals.

The Examiner states that the language "confirming collection is inconsistent with potentially connected devices" of claims 22 and 35 has no support in the disclosure. (Office Action, Feb. 16, 2005, ¶ 6.) Claims 22 and 35 actually recite "when a confirming collection is inconsistent with potentially connected devices being connected, indicating that the potentially connected devices are not connected." The claims as originally filed (e.g., claim 2) referred to this "confirming" step. Moreover, the specification states that

The suspected pair list 316 represents those DLCIs that potentially match, but require further testing to ensure such DLCIs do in fact match...If the fingerprints do not match within the threshold, then the facility 300 determines that the DLCI pair does not match, and the DLCIs are placed back on the unmatched list 306.

(Specification, 14:25-15:23.) This section describes being "inconsistent" as not matching within a threshold which results in adding the pair to the unmatched list. Pairs on the suspected pair list are those that are potentially connected, while those placed on the unmatched pair list are those that are not connected. Therefore, this language is supported by the specification.

The Examiner states that the language "accounts for skew in time of collection" of claim 26 has no support in the disclosure. (Office Action, Feb. 16, 2005, ¶ 6.) The

specification states "... which is known as statistical skew. A longer polling cycle is employed under step 308 to help eliminate statistical skew." (Specification 15:11-12.) Therefore, the specification describes techniques that account for statistical skew.

The Examiner states that the language "statistical data is within a threshold" of claims 28 and 37 and the language "increasing the threshold" of claims 29 and 38 have no support in the disclosure. The specification, however, states that "[i]f the fingerprints do not match within the threshold" and that "the facility 300 increases the thresholds." (Specification, 15:22-23 and 14:18.) This clearly describes thresholds and increasing thresholds.

The Examiner rejects claims 20-38 under § 101 apparently as lacking utility. But, the Examiner's discussion focuses on the "computer-readable medium" claims as being non-statutory subject matter. It is unclear whether the Examiner is rejecting the claims based on utility or statutory subject matter, or both. Although the claims recite a computer-readable medium that contains instructions for performing a method, the discussion focuses on data structures as not being statutory subject matter. It appears that the Examiner mistakes applicant's Beauregard claims for Lowry claims. These claims are not claiming a data structure.

The Examiner rejects claims 14-15 under 35 U.S.C. § 103(a) based on the Bosa and Albert references. The Examiner does not provide any motivation to combine. Applicant discussed the lack of motivation to combine in a telephone conference with the Examiner, the Examiner appears to have intended the language "in the same field of endeavor" in the Office Action to serve as the motivation to combine. (Office Action, Feb. 16, 2005, ¶ 10.) If this were a sufficient motivation, however, then any two references "in the same field of endeavor" could be combined, which is clearly not the law.

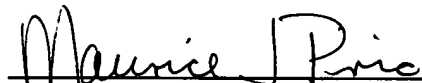
The Examiner objects to the drawings under 37 C.F.R. § 1.83(a) on the basis that they do not show every feature of the invention specified in the claims. The

Examiner appears to be taking the position that every word used in the claims must appear in the drawings, which is clearly not the case. The specification discusses Figure 3 in detail on pages 12-16. Each of the features quoted by the Examiner as part of this objection is described in those pages in reference to Figure 3. Thus, the drawings do show all the features of the claims.

In view of these errors, applicant respectfully requests reconsideration of this application.

Respectfully submitted,
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Date: August 16, 2005


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